

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

WILLIAM A. MERRITT,

Plaintiff,

v.

CIVIL ACTION NO. 2:09-00522

RUSSELL MATHENY, Captain, et al.,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the court is defendant Eric Miller's motion to dismiss (Doc. No. 18), to which plaintiff has filed no response. By Standing Order, this matter was referred to United States Magistrate Judge Mary E. Stanley on May 13, 2009. (Doc. No. 4.) Pursuant to 28 U.S.C. § 636, the Standing Order directs Magistrate Judge Stanley to submit proposed findings and recommendation concerning the disposition of this matter. Magistrate Judge Stanley submitted her Proposed Findings and Recommendation ("PF & R") on November 3, 2009, recommending that this court dismiss the Complaint pursuant to 28 U.S.C. § 1915A as to defendant Miller only for failure to state a claim upon which relief may be granted. (Doc. No. 20.)

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge Stanley's PF & R. No party filed objections to the magistrate judge's proposed

findings, and the failure to file objections within the appropriate time frame constitutes a waiver of the right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985).

Having reviewed the Proposed Findings and Recommendation filed by Magistrate Judge Stanley, the court (1) **CONFIRMS AND ACCEPTS** the magistrate judge's findings (Doc. No. 20); (2) **DISMISSES** plaintiffs' Complaint (Doc. No. 2) **WITH PREJUDICE** as to defendant Miller only; and (3) **DENIES AS MOOT** defendant Miller's motion to dismiss for improper service (Doc. No. 18).

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to all counsel of record and to any unrepresented party.

It is **SO ORDERED** this 15th day of December, 2009.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", written in black ink over a horizontal line.

David A. Faber

Senior United States District Judge